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Life Assurance Company

ORIGINAL

U.S. DISTRICT COURT
U.S. BANKRUPTCY COURT
DISTRICT OF IDAHO

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CHRIS J. DENNISON,

Plaintiff,

vs.

CONTINENTAL CASUALTY COMPANY,
an Illinois corporation; CNA GROUP LIFE
ASSURANCE COMPANY, a wholly owned
subsidiary of Continental Casualty Company,
RURAL TELEPHONE COMPANY, an
Idaho Corporation,

Defendants.

Case No. CIV-02-507-S-LMB

MEMORANDUM IN SUPPORT
OF DEFENDANT CNA'S MO-
TION TO DISMISS AND MO-
TION FOR BENCH TRIAL

COMES NOW, Defendant CNA, by and through their counsel of record, Quane Smith
LLP, and hereby submits the following memorandum in support of its Motion to Dismiss and
Motion for Bench Trial, filed concurrently herewith.

I. BACKGROUND

Plaintiff filed a Complaint and Demand for a Jury Trial. In the Complaint, he alleges that jurisdiction is vested pursuant to 29 U.S.C. §1132(e)(1). That code section deals with federal jurisdiction of claims arising under the Employee Retirement Income Security Act of 1974 (ERISA). (Complaint at p. 2, §5). In essence, the Complaint alleges that the plan administrator for a group long term disability insurance plan, which was provided through his employer, incorrectly denied long term disability benefits to him. Plaintiff, however, seeks relief under theories of breach of contract and breach of fiduciary duty. As these claims are common law theories, they are preempted by ERISA's preemption clause, 29 U.S.C. §1144(a).

II. ARGUMENT

Plaintiff is seeking benefits under an employee welfare benefit plan, as that as defined in ERISA at 29 U.S.C. §1002(1). As such, Plaintiff may have a cause of action if it is based upon 29 U.S.C. §1132(a)(1)(B), to recover benefits due to him under the terms of the plan. However, all other causes of action, particularly those arising under common law or state causes of action are explicitly preempted by 29 U.S.C. §1144(a). As such, Plaintiff's "breach of contract" and "breach of fiduciary duty" are preempted. Because Plaintiff's Complaint fails to assert any other legal theory, particularly that provided by statute, he fails to state a claim upon which relief can be granted and his Complaint should be dismissed pursuant to F.R.C.P. 12(b)(6).

Alternatively, if this Court determines that Plaintiff's Complaint or cause of action survives in some manner, Plaintiff is nonetheless not entitled to a jury trial to resolve those claims. Again, any cause of action Plaintiff could assert in this case, would arise under the provisions of ERISA. In deciding an ERISA claim, the Court is the appropriate fact finder and not the jury. See, generally, *Thomas v. Oregon Fruit Products Co.*, 228 F.3d 991, 995-996 (9th Cir. 2000).

III. CONCLUSION

Based upon the foregoing, Plaintiff's Complaint fails to state a claim upon which relief can be granted, and should be dismissed. Alternatively, if any of Plaintiff's claims survive, then the proper method of adjudicating this dispute would be through a court trial and not a jury trial.

RESPECTFULLY SUBMITTED this 3rd day of January, 2003.

QUANE SMITH LLP

By: 

Robert D. Williams, of the Firm
Attorneys for Defendants Continental
Casualty Company and CNA Life Assurance Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2003, I served a true and correct copy of the foregoing DEFENDANT CNA'S MOTION TO DISMISS AND MOTION FOR BENCH TRIAL by:

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